GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/S. Bharath Electronics, Ltd., Jalahally, Bangalore.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

(1) Letter No. 956–957/66-67, dated 8th November 1966, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 8th day of November 1966

Present :

Sri P. T. Kadkol, B.SC., LL.B. *Presiding Officer.*

Reference No. 74 of 1965.

Between

Workmen represented by the General Secretary, Bharath Electronics Employees' Union, B. E. L. Hostel Area, Bangalore ... *I Party*

and

The Management of M/s. Bharath Electronics, Ltd., Jalahally, Bangalore. ... *II Party.*

Reference :

Government Order N PLM 357 LLD 65, dated 9th December 1965.

AWARD

The Government of Mysore being of opinion that an Industrial dispute exists between the Workmen and the Management of M/s. Bharath Electronics Ltd., Bangalore have referred it to this Court or adjudication under Section 10 (1) (c) of the Industrial

Disputes Act, 1947 by their Order No. PLM 357 LLD 65, dated 9th December 1965, setting out the following points of dispute for adjudication :—

> "(1) Is the Management of Bharath Electronics Limited, Bangalore justified in terminating the services of Sri R. Govinda Reddy, St. No. 3517, Driver, with effect from 4th December 1964 ?
>
> (2) If not, is he entitled for reinstatement with continuity of service and back wage ? or to any other relief ?"

2. The case of the aggrieved workman Sri R. Govinda Reddy has been sponsored by the Bharath Electronics Employees' Union, Bangalore, which is a registered trade union. This Union, as representing the Workmen, is the first party and the Management of the Bharath Electronics Ltd., (B. E. L), Bangalore, is the Second Party, in this proceeding. Mr. M. C. Narasimhan has appeared for the First Party Union and advocate Mr. Parthasarathy, has appeared for the Second Party Management.

3. The aggrieved workman Govinda Reddy, is a Motor Vehicle Driver. He is an Ex-Serviceman, having served as Motor Vehicle Driver, in the Army for a couple of years. He applied to the Management of the Second Party on 7th October 1962 seeking employment as a Motor Vehicle Driver through the Mysore Ex-Services Association. In response to this application, the Management called him for an interview on 19th November 1962 (*Vide* Ex.W.1). After interview, the Management offered him the post of a Motor Vehicle Driver by a letter dated 10th December 1962, subject to his accepting the conditions mentioned therein (*Vide* Ex W.2). Govinda Reddy accepted those conditions. So, the Management appointed him as a Driver with effect from 28th December 1962 and he joined service the same day. The appointment order also contains all the conditions subject to which, he was appointed (*Vide* Ex.W.3 and Ex.M.1). Conditions Nos. 6, 7 and 12, imposed by the Management and accepted by the workman are these :

> "6. You (meaning Govinda Reddy) will be on probation for a period of six months (from the date of your appointment) in the first instance and this period may be extended if considered necessary by the Company. You will be deemed as confirmed in the post only if you are intimated to that effect in writing.

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> "6. You (meaning Govinda Reddy) will be on probation for a period of six months (from the date of your appointment) in the first instance and this period may be extended if considered necessary by the Company. You will be deemed as confirmed in the post only if you are intimated to that effect in writing.

"7. During the period of your probation, your services will be terminable without notice and without any compensation in lieu of notice on either side. After the probation period, when you are confirmed your services will be terminable by one Month's notice in writing on either side or one month's salary (pay plus allowances) in lieu of notice.

"12. During your employment you will be governed by the Rules, Regulations of service and Standing Orders of the Company now in force and which may be amended, altered or extended from time to time and your acceptance of this Appointment Order, carries with it your agreement to obey all such Rules, Regulations and Standing Orders."

4. The period of six months of probation fixed in the first instance was due to expire on 28th June 1963. The management, however, extended it by three months, by its letter dated 25th June 1963 (*Vide* Ex.W.4 and Ex.M.3) as the verification on his credentials/antecedents was not complete. The extended period was to expire on 28th September 1963.

5. But on 10th July 1963, the Management issued him another letter (*Vide* Ex. W. 7 and Ex. M 4) further extending his period of probation by another period of six months on the following grounds :

"As it is reported that your behaviour/efficiency are not satisfactory, your probation has been extended for a period of six months. Your confirmation thereafter will depend upon satisfactory reports from your superiors."

According to this Order, the period of probation was to expire (presumably) on 28th March 1964.

6. The Mangement did not issue him any order of confirmation soon after 28th March 1964 nor did it extend the period of probation, further. He continued, however, in service. He was also given one increment of Rs. 6 in the time scale, with effect from 1st January 1964 (*Vide* Ex. W. 8).

7. Then on 4th December 1964, the Management issued him the termination order, with immediate effect (*Vide* Ex. W. 9 and Ex. M 6). The material portion of this order reads as under:—

"Your conduct, ability and adaptability to the job assigned to you, were closely watched. But it is found that you have not measured up to the requirements.

Consequently, in pursuance of paras 6 and 7 of your appointment order No. 3517/E1/PD, dated 28th December 1962 and as provided under the Company's Standing Order No. 3 (c), your services in the Company are hereby terminated with immediate effect....."

In pursuance of this Order, he was relieved the same day.

8. On being so terminated and relieved of his job, Govinda Reddy approached the First Party Union. The Union sent the letter dated 6th February 1965 to the Management, demanding his reinstatement (*Vide* Ex. W. 10). Thereafter, the Union sent the letter dated 26th February 1965 to the Conciliation Officer (*Vide* Ex. W. 11) seeking conciliation. The Conciliation Officer was unsuccessful in bringing about a settlement. Hence he sent his report to the Government (*Vide* Ex. W. 12) on 29th May 1965. After receiving that report, the Government have referred the dispute for adjudication to this Court.

9. The facts stated in the foregoing paragraphs, are admitted on both hands.

10. This Court, after registering the Reference, called upon the parties to submit their statements. The Unicn has submitted its claim statement and the Management has submitted its counter-statement.

11. After setting out the relevant facts, the Union has challenged the order of termination of Govinda Reddy on the following grounds :

> "The termination is not in accordance with the standing Orders; Govinda Reddy could not be deemed to be a probationer to whom Rule 3 (c) applied; the termination is arbitrary and is a colourable exercise of the power, if any, to terminate; the termination has been made without any enquiry and for extraneous reasons; it also contravenes the provisions of Section 25F of the Industrial Disputes Act, etc."

The Union has prayed that for the foregoing reasons, the order of termination shold be set aside and Govinda Reddy be directed to be reinstated with back wages and continuity of service.

12. The Management has raised the following contentions:—

"The appropriate Government in relation to the Company (B. E. L) is the Central Government and not the State Government and so, this court has no jurisdiction to adjudicate upon the present dispute; Govinda Reddy had been appointed on probation subject to all the terms and conditions mentioned in the order of his appointment; his services were terminated by the management of the Company, in *bona fide* exercise of the powers vesting in it under the terms of the contract of service and the Standing Orders, as it was found that his behaviour and efficiency were not satisfactory and he did not also. improve inspite of warning notices and oral appraisals; he was found to have been guilty of lapses on as many as eleven occasions, narrated in detail, in the annexure to the Counter; the allegations of *mala fides* and injustice made by the Union are baseless; it is denied that his termination was made arbitrarily and in colourbale exercise of the powers or for extraneous reasons; his services have been terminated for valid and justifiable reasons and in *bona fide* exercise of the powers of the Company under the contract of service; there is no merit in the Reference are the allegations made by the Union; hence the Reference deserves to be rejected, etc.

To this counter statement, has been appended an annexure containing the lapses found on the part of Govinda Redd uri ng the period of his employment, on eleven occasions. *y*

13. On the basis of these pleadings and the statements of their respective cases made by Mr. Narasimhan and Mr. Parthasarathy, the following additional issues have been farmed and set down for hearing by me on 25th April 1966 (*Vide* Order Sheet):

1. Is it open to the First Party Union to challenge the termination of the services of Govinda Reddy, who was addmittedly a probationer, on the ground that it is unjust, illegal and *mala fide*?
2. If so, does the First Party Union prove that it is unjust, illegal or *mala fide* or bad on any or all grounds mentioned in para 4 of the claim statement?
3. Is the Reference of this dispute by the State Government under Section 10 (1) (c) of the Industrial Disputes Act, in order or is it bad?

4. Is the above contention barred by the principles of *Res-judicata* or any other principles of law?

Parties were asked to lead evidence with respect to all the issues and they have done so. The Union has examined Govinda Reddy (W. W. 1) and V. S. Ramalu (W.W.2) and produced thirteen documents marked as Exts. W. 1 to W. 13. The Management has examined K. M. Mallappa (M. W.1) and produced seventeen documents marked as Exts. M.1 to M. 17. This is all the evidence in the case. I now proceed to discuss the evidence, to examine the legal position and to record my findings.

14. Issue No. 3 formulated above was raised on the contention of the Management that the appropriate Government to refer a dispute for adjudication in relation to the B. E. L. Company was the Central Government and not the State Government and on this ground, the present Reference made by the State Government was bad. The learned Advocate for the Company however, submitted on 30th June 1966 that he would not press this issue. A note has been made by me to this effect in the order sheet and it has been signed by the lerned representative of both parties. No finding is, therefore necessary on this issue. Consequently, issue No. 4 would not survive.

15. Now I take up the first issue. Admittedly, Govinda Reddy had been appointed on probation and the Management had reserved with itself, the right of extending the period of his probation. It had also reserved the right to terminate his services during the continuance of the probationery period as orginally fixed or as extended later. These are the conditions of his appointment and thus, the terms of the contract of service. The case of the Management is that since it has terminated the services of Govinda Reddy in exerise of its powers under the Contract of service, neither he nor the Union on his behalf, is entitled to challenge it and raise this dispute. On the other hand, the contention of the Union is that the Order of termination is *mala fide*, unjust and illegal and has been passed only with the intention of victimising him. Whether the Union can be allowed to lead evidence on these points and prove them, is the question involved in the first issue.

16. This question at issue between the parties has been concluded by various decisions and very recently, by the decision of the Supreme Court reported in 1966 (I) LLJ 398 (Utkal

Machinery Ltd., *vs*-Santi Patnaik) The principal laid down by the Supreme Court is this :—

> "In case of a probationer, the Management might have the contractual right to terminate the services of a Probationer during the probationery period without notice and without assigning any reason. But when the validity of such termination is challenged in an industrial adjudication, it would be competent to the Industrial Tribunal to enquire whether the order of termination has been effected in the *bona fide* exercise of its power conferred by the Contract. If the discharge of the employee has been ordered by the Management in *bona fide* exercise of its power, the Industrial Tribunal will not interfere with it, but it is open to the Industrial Tribunal to consider whether the termination is *mala fide* or whether it amounts to victimisation of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motive and not in *bona fide* exercise of the power arising out of the contract. In such a case it is open to the Industrial Tribunal to interfere with the order of the Management and to afford proper relief to the employee".

The above decision, cited by Mr. Narasimhan for the first party Union, clinches the issue. Following it, I hold that it is open to the Union to challenge the termination of Govinda Reddy on the grounds set out in the statement of claims and record my finding on the first issue, in its favour.

17. The burden of proving *mala fides* and ulterior motive in passing the impugned order, on the part of the Management, lies on the first party Union. In this connection, it is necessary to know the legal position in respect of probationers or persons appointed on probation. I now proceed to examine this question.

18. Our High Court had an occasion to consider this question in 1956-I-LLJ 41 (Venkatacharya B. V. *Vs.* Mysore Sugar Company Ltd.,). It has been observed therein :—

> "Probation, according to Law Lexicon of Ramanath Iyer, means "testing of a person's capacity, conduct or character, especially before he is admitted to regular appointment ".

Obviously, a Probationer is not in the same position as others in service. He is in a state of suspense attended with the uncertainty of an inchoate arrangement. *Prima facie*, his right and claims against the employer are less than that of others. Probation could not be taken to bind the parties to the employer or employee till it is over and confer on the employee rights not available to others. That would be contrary to the accepted notion of service as probation is understood to be a state preparatory and prior to confirmation. The service of a person on probation could be dispensed with on grounds on which a person appointed without it could be dismissed. The probation period denotes the time up to which he would be on trial and not an assured duration of service."

This decision has been followed in 1958-I-LLJ 679 (Brian Bobb *Vs.* Express News Papers (P) Ltd., Madurai) by the Labour Court, Madurai. Against the decision of the Labour Court, there was an appeal to the High Court of Madras and against the decision of the High Court, the Supreme Court was approached. The decision of the Supreme Court has been reported in Express Newspapers (P) Ltd., *Vs.* Labour Court, Madhurai [1964 (I) LLJ 9.]

The Supreme Court has laid down :—

"An employee appointed on probation for a certain period continues as a probationer even after the expiry of that period if at the end of the period his services had neither been terminated nor confirmed. Without anything more, an appointment on probation for a certain period gives the employer no right to terminate the services of an employee before the said period had expired, except on grounds of misconduct or other sufficient reasons, in which case even the services of a permanent employee could be terminated. At the end of the period, the employer can either confirm him or terminate his services, if his service is found unsatisfactory. If no action is taken by the employer, either way, the employee continues to be in service as a Probationer."

19. The next decision in point is the one reported in Caltex (India) Ltd., *Vs.* The Second Industrial Tribunal, West Bengal

(1963-I-LLJ-156) The Calcutta High Court had laid down therein :—

> "A Probationer does not automatically attain permanent status on the expiry of his period of his probationship. If he is neither discharged nor confirmed, he continues to serve as a probationer until otherwise dealt with. Therefore, in the absence of anything contained in the contract to the contrary, nothing prevented the petitioner Company from extending the period of probation for a further limited period of three months.
>
> Whether a probationer had put in satisfactory service or not rests with the satisfaction of the employer. Such satisfaction could not be objectively tested and an employer is not bound to give any reasons if he does not confirm the probationer on the expiry of the period of probationership.
>
> If one acts within his discretionary rights, it is difficult to ascribe *mala fides*, against him. The employer need not give any reasons for discharging the Probationer. The fact that certain reasons given by the employer did not appeal to the Industrial Tribunal could not take away or detract from such right. The Industrial Tribunal could not sit over the judgment of the employer in such matters and direct the employer to absorb the probationer."

20. In another decision, reported in 1962-2-LLJ-541 (Harabilas Biswas *Vs.* Commissioner of Income Tax, West Bengal), the Calcutta High Court has held :—

> "After having got the advantage of the extension of the period of probation it is not open to the Petitioner to make a grievance that the probationary period should not have been extended. The conditions of service was also not such as could not be varied by agreement. It is not the law that on the expiry of the period of probation a civil servant can claim a status other than that of a probationer. If he is not confirmed in the appointment, in which he has been appointed, he must be deemed to be on probation, even thereafter.

21. The recent pronouncement of Punjab High Court on this subject is reported in [Rehbar (V. P) *Vs.* State of Punjab] 1965-2-LLJ 292. In the reported case, the employee who was

the petitioner before the Court had been employed on probation for a period of two years in a temporary post and his services were terminated ; the appointment letter provided that his service could be terminated without notice, if administrative exigencies so dictated ; his services were terminated before the period of probation as no longer required ; it appeared that the petitioner had some brushes with the Government as he addressed a public meeting, where he ventilated his own views and criticised Government Departments and also wrote directly to the Government of India without resort to recognized channels ; he was asked to explain his conduct which was described as objectionable and was also given a warning by the Government through the Deputy Secretary to ensure that he did not resort to such matters again ; an explanation was also called from him about the letter he wrote to another superior officer ; however, there was nothing on record to show that any enquiry was held or any further action was taken against the petitioner beyond passing the impugned order of termination. It was contended before the High Court that the termination of the services of the petitioner was really punitive in nature and made in violation of Art. 311 of the Constitution :—

"Negativing this contention it was held:—It could not be held that the Petitioner was punished for any misconduct. There was no enquiry and *prima facie* the order of termination does not refer to any defect or misconduct on the part of the petitioner. Even if the correspondence referred to in the instant case coupled with the explanation called for imply some sort of enquiry, it has not been found to have been made with the object of punishing the petitioner. Hence it must be held that the Petitioner was discharged in accordance with the terms of his appointment letter and that the Order of termination was not punitive in nature."

22. In the abovementioned decision, the High Court has referred to and relied on the decisions of the Supreme Court reported in :—

1. 1964-I-LLJ 418 (Jogdish Mitter-*Vs*-Union of India)
2. 1964-I-LLJ 752 (Champakalal Chimnlal Shali *Vs.* Union of India).

Some passages from the decision of the Supreme Court have also been extracted. In the former case, the Supreme Court has observed :

> "The motive operating in the mind of the Authority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character."

In the latter case, the Supreme Court has observed :—

> "That is why this Court emphasized in Parshotam Lal Dhingra. *Vs.* Union of India (1958-II-LLJ 544) and in Shyam Lal *Vs.* State of Uttar Pradesh (1954-II LLJ 139) that the motive or inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rules is irrelevant."

23. The Supreme Court itself has summarised the position in Dhingra's case in A. I. R. 1960 S. C. 689 (State of Bihar *Vs.* Gopi Kishore)—(*Vide* Page 174, Law relating to Services and dismissals by S. Bala Krishnan, 1962 Edition) as under :—

> "1 Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated. Without taking recourse to proceedings laid down in the rules for dismissing a public servant or removing him from service.
>
> 2. The termination of employment of a person holding a port on probation without any enquiry whatsoever can not be said to deprive him on any right to the post and is, therefore, no punishment.
>
> 3. If the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary Civil Servant can have no cause of action, even though the real motive behind the removal from service "may have been that his employer thought him to be unsulitable for the post he was temporarily holding, on account of his misconduct, or inefficiency or some such case."

24. There is yet another decision of the Supreme Court, on the same point. It is reported in State of Orissa *Vs.* Ram Narain

Dass (A. I. R. 1961 S. C. 175). In that case, a probationary Sub-Inspector of Police was discharged from service after giving him a notice to show cause why he should not be discharged. In the order of discharge it was stated that he was "discharged from service for unsatisfactory work and conduct". Holding that the provisions of Art. 311 were not attracted in the case, the Supreme Court observed :—

> "The enquiry against the Respondent was for ascertaining whether he was fit to be confirmed. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification may appropriately, be regarded as one of punishment, but an order discharging a probationer, following upon an enquiry to ascertain whether he should be confirmed is not of that nature."

25. From the various decisions cited and discussed above coupled with the recent decision of the Supreme Court reported in 1966 (1) LLJ 398, it is evident that the position in law with regard to probationers, is fairly well established. The evidence led in this case will have to be appreciated with this legal position at the back ground.

26. The first point to be noted is that Govinda Reddy was never confirmed in service. His probation was extended twice. He has taken full advantage of and benefits under his two periods of extension. He cannot now be allowed to content that his period cf probation could not be extended. Nor can he ask this Court to assume that he was rendering very satisfactory service on the ground that he was granted an increment in the time-scale. Even when he was serving after the expiry of his second period of extension, he can not be deemed to have attained any higher status than that of a probationer, in view of the various decisions cited above.

27. So, we are dealing with the case of a probationer, whose service have been terminated by the Management. It can not at all be denied that the Management had a right to judge the work of Govinda Reddy and confirm him in the post held by him if his work was found satisfactory or terminate his services, if otherwise, under the very terms of the contract of service. Whether a probationer had put in satisfactory service or not rests with the

satisfaction of the employer and such satisfaction cannot be objectively tested. The Industrial Tribunal can not sit over the judgment of the employer in such matters.

28. The simple case of the Management is, that it terminated the services of Govinda Reddy, as it found them to be unsatisfactory. Though the Management was not bound to say why or on what grounds, it came to such a conclusion, it has, in fairness to Govinda Reddy, set out eleven occasions on which it found lapses, on his part during the course of his employment. Mr. K. S. Mallappa (M. W. 1), the witness for the Management is the Municipal Engineer of the Company (B.E.L). Govinda Reddy was serving in his department and under him. He has sworn that Govinda Reddy did not come up to the measure of the requirements of the Company for the following reasons :—

(1) More accidents were committed by him ;
(2) He failed to carry out the instructions given by his superiors.
(3) He was carrying unauthorised persons in the Company's vehicles and collecting money from them ;
(4) He lacked co-operation and team spirit.
(5) His behaviour was rude and
(6) His service record was bad.

29. To prove his statement, Mr. Mallappa has produced some documents also. Mallappa has sworn that on 4th March 1964, an "advice note" was given to Govinda Reddy after taking his signature in the despatch book. The Despatch Register has been produced. On page 148 thereof, the delivery of the advice note has been noted down. In the last column, appears a signature, which Mallappa swears is the signature of Govinda Redey. In his cross-examination (paragraph 8), Govinda Reddy has admitted that an Advice note was given to him by the Management on 4th March 1964, to the effect that he was driving the vehicle at excessive speed. With regard to his signature on page 148 of the Despatch Book, he has stated that he is unable to say whether or not, it is his signature. On 15th April 1963, warning notice No. 1 has been given to Govinda Reddy by the Management. For receiving this notice, Govinda Reddy has signed in the Despateh Register at Page 72. In his deposition

(Para 9) Govinda Reddy has admitted this signature and hence it is marked Ex.M.11. The warning notice has been produced at Ex.M.2. It is to the effect that due to his negligence two vehicles of the Company had met with accidents resulting in considerable damage to them. At page 62 of the same despatch register, Govinda Reddy has signed (Ex.M.10) acknowledging receipt of his appointment Order. Under the signature (Ex.M.12), in the same Register, he has acknowledged receipt of one order. The Management has also produced, the Outward Register. At page 34 therein, an entry has been made to the effect that the Management had issued Warning Notice No. 2 to Govinda Reddy on 1st September 1964 to the effect that he had failed to pick up the employees of the Company at a pick-up point. Govinda Reddy has admitted his signature against this entry (Ex.M.13). The copy of the Warning Notice, is at Ex.M.5. In the same Register, at Page 58, appears an entry to the effect that one confidential cover was delivered to Govinda Reddy. Govinda Reddy has signed against this entry and has admitted his signature (Ex.M.14.) Mr. Mallappa has also sworn that on 20th October 1963, Govinda Reddy was found to have been carrying two passengers in the Company's van unauthorisedly; and on 13th October 1963 he was found to be carrying three passengers unauthorisedly. Mr. Mallappa has also sworn that on a number of occasions he called Govinda Reddy in his office and pointed out to him his deficiences and asked him to improve but he did not show any improvement.

29. The Management of the Company (B.E-L.), besides a personal file for each workman, also maintains a "Rating Sheet" with respect to each of them. The merit of each workman is rated under various heads. Two Rating sheets relating to Govinda Reddy have been produced at Exts. M.16 and M.17. The first is for the year 1963 and the second is for the year 1964. At the end of the Rating sheet, Ex.M.16, Mr. Mallappa has remarked as under on 11th March 1964:—

> "M/E has advised the party all his deficiencies in the presence of the T. A (R) on 11th March 1964".

The Rating sheet shows that under many items Govinda Reddy's work has been assessed to be "Below average". Likewise is the rating of Govinda Reddy in the year 1964, as noted in Ex.M-17. Mr. Mallappa has been subjected to a searching cross-examination and he has withstood it, very satisfactorily. There is no reason to infer that Mr. Mallappa was prompted by any malice against

Govinda Reddy, in rating his work. Even leaving out the instances which are not supported by any documentary evidence, we find that, Govinda Reddy was guilty of the following lapses:—

1. He was driving the vehicles at excessive speed for which an "Advice Note" was given to him.
2. By his negligent driving two vehicle were involved in accidents causing considerable damage to them (Warning Notice No. 1)
3. He did not pick up the employees at the pick-up point (Warning Notice No.2).

Govinda Reddy has admitted receipt of the Advice Note and the two warning notices. Then under many items of his job, he has been rated to be "Below Average".

31. Mr. Narasimhan contends that none of the alleged lapses have been proved by the Management, by leading positive evidence. But the law, as propounded by the various High Courts and the Supreme Court do not require the Management to prove them by leading positive evidence. The decisions go even so far as to say that the Management need not give any reasons for terminating the services of a probationer.

32. Then it may be noted that the two warning notices were produced by the Management in Court, with list dated 12th April 1966. On 16th June 1966, an endorsement has been made on this list by Mr. Narasimhan admitting receipt of these two warning notices and thereafter, they have been marked in evidence as Exts. M.2 and M 5. In his deposition Govinda Reddy (W W.1) has not stated that these two warning notices and the letter Ex.M.4 were issued to him maliciously or the grounds on which they were issued to him were false. He has, however, made an attempt to show that the Management was not fair to him. He has stated that he had given a camplaint on 4th July 1963 to the Management against the treatment meted out to him by a co-driver, by name Joseph and the Management did not pay any heed to it. The copy of the complaint given by him is Ex.W 5. But Ex.W.6 dated 8th July 1963 produced by himself, shows that the Management has taken suitable action in the matter. Then Govinda Reddy has referred to one incident in paragraph 5 of his deposition. He has stated :—

> "just prior to 4th December 1964, all the drivers had struck work for two days and I was one of them. These

drivers had a complaint against Joseph. I and some other drivers had a talk in this connection with the Personnel Manager and Mallappa, the Mechanical Engineer. We complained before them against Joseph. They did not say anything with regard to our complaint. Mallappa became angry with us."

If Govinda Reddy had stated that this was the reason for the Management to terminate his services, it was quite understandable. But in the very next paragraph No. 6, he has stated :—

"I do not know why the Management of the Factory has terminated my services."

In the whole of his deposition, Govinda Reddy has not said anything against the Management even remotely suggesting lack of *bona fides* on its part in passing the order of termination.

33. Govinda Reddy's witness Mr. V. S. Ramalu (W.W.2). however, has tried to attribute motives to the Management in passing the termination order. Mr. Ramalu is working in the Company (B.E.L.) as Senior Office Assistant. He is also the General Secretary of the First Party Union. He has stated :

"Govinda Reddy was one of the active workers of the Union. Just a few weeks before the termination of the services of Govinda Reddy there was a strike of all the drivers of the Second Party Company which went on for two days.... Because Govinda Reddy took an active part in the strike, the Management has chosen to punish him by terminating his services. Govinda Reddy and others had complained to the Management about the unnecessary interference of Mr. Joseph. Because of this also Govinda Reddy was terminated."

Then in his cross-examination Mr. Ramalu has admitted that he was not present in the night when the drivers' strike commenced and he was told the next morning as to who all had taken part in it.

34. Now it may be noted that Govinda Reddy himself has not said that he was an active worker of the Union. He has also not stated that his services were terminated by the Management on the two grounds stated by Mr. Ramalu. It appears that Mr. Ramalu has only inferred that the Management might have terminated the services of Govinda Reddy on the two grounds stated by him. He has not said anything about the

denied that the Management has got the right to terminate the services of a probationer. Mr. M. C. Narasimhan has attacked this right of the Management on the basis of the decision in 1961-2-LLJ 204 (Ever-ready Flash Light Co.) wherein a right in the employer to extend the probationary period indefinitely has been condemned. But there is no scope for the application of that decision in this case. Another decision cited before me by Mr. Narasimhan is the one reported in 1963 (1) LLJ 222 (Motor and Machinery Manufacturers Ltd.,). The Punjab High Court has observed therein that when an employee's period of probation expires and there is no extention of it, he ceases to be a probationer or a person on probation and obviously he cannot be dealt with on the same basis as if he was a probationer or a person on probation. But it would be doubtful if this principle can be applied to the present case, in view of the Supreme Court decision in 1966 1) LLJ 398. So, with respect I would not follow the Punjab decision.

38. If we now analyse the entire evidence led in this case, we find that the Management has acted very fairly with Govinda Reddy. It has given him one Advice note and two warning notices. In the letter, extending his period of probation for the second time, it has informed him that his work was not satisfactory It has given him all opportunity to improve himself. It has not even withheld the increment that fell due to him. When it found that there was no improvement in Govinda Reddy and that he did not measure up to its requirements, it has terminated his services. On the other hand there is no material on record to show or even infer, that the Management was lacking in *bona fides* or was prompted by any sense of victimisation or unfair labour practice or by ulterior motives , in terminating the services of Govinda Reddy. The order of termination of his services has not been shown and much less proved to be unjust, illegal or *mala fide*. The Management has established the existence of reasonable grounds for its taking the action it did, against Govinda Reddy. I would, therefore record my finding on the second issue against the Union.

39. In view of these conclusions reached by me, I hold that the Management was justified in terminating the services of Govinda Reddy and that he is not entitled to reinstatement. These are my findings on the points of dispute referred for adjudication.

40. In the result, therefore, I make an Award as under:—

AWARD.

The Reference is rejected. The demand of Govinda Reddy and the First Party Union on his behalf for his reinstatement is also rejected. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.